

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2001-429-T - ORDER NO. 2002-260

APRIL 5, 2002

IN RE: Application of Thompson & Webster, LLC	)	
d/b/a Two Men and A Truck of Augusta,	)	ORDER GRANTING
3520 Wrightsboro Road, Augusta, GA 30909	)	CLASS E CERTIFICATE
for a Class E Certificate of Public	)	
Convenience and Necessity to Transport	)	
Household Goods.	)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Application of Thompson & Webster, LLC d/b/a Two Men and A Truck of Augusta, 3520 Wrightsboro Road, Augusta, GA 30909 (hereafter referred to as “Thompson & Webster” or the “Applicant” or the “Company”). By its Application, Thompson & Webster requests a Class E Certificate of Public Convenience and Necessity (“Certificate of PC&N”) to transport household goods. Specifically, Thompson & Webster seeks authority to transport household goods as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):  
Between points and places in Aiken, Barnwell, Edgefield,  
Greenwood, Lexington, McCormick, Orangeburg,  
Richland, and Saluda Counties and from points and places  
in Aiken, Barnwell, Edgefield, Greenwood, Lexington,  
McCormick, Orangeburg, Richland, and Saluda Counties to  
points and places in South Carolina.

The Commission’s Executive Director instructed Thompson & Webster to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing provided details of the Application and of the requested

authority and provided information for public participation in the proceedings concerning the Application. No Petitions to Intervene were filed by concerning the instant Application, but two Petitions of Protest, from Dale J. Cook Moving & Storage, Inc. and Dickert's Moving & Storage, Inc., were filed.

A hearing on Thompson & Webster's Application was held on February 7, 2002, at 2:30 P.M. in the hearing room at the offices of the Commission. The Honorable William T. Saunders, Chairman, presided at the hearing. Thompson & Webster was represented by John, J. Pringle, Jr., Esquire. Florence P. Belser, Deputy General Counsel, represented the Commission Staff. As a matter of record, the two formal protestors did not appear at the hearing.

Mike Thompson, Tara Kreh-Boyer, and William Moore testified on behalf of Thompson & Webster. The Commission Staff presented no witnesses at the hearing.

#### **APPLICABLE LAW**

1. S.C. Code Ann. § 58-23-20 (Supp. 2001) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the

provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2001) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2001) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs. 103-102(1) (Supp. 2001) defines "Certificate of PC&N" as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any

municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(14) (Supp. 2001) defines “Common Carrier by Motor Vehicle” as “any person<sup>1</sup> which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976.”

8. A “Class E Motor Carrier” is defined in 26 S.C. Regs. 103-114 (Supp. 2001) as a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.”

9. 26 S.C. Code Regs. 103-133 (Supp. 2001) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to be appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.<sup>2</sup> If

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<sup>1</sup> 26 S.C. Code Regs. 103-102(15) defines “person” as “any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.”

<sup>2</sup> By Commission Order No. 1999-654, dated September 15, 1999, (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less. In approving the waiver for these applicants seeking such a limited scope of

the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.P.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 2001) is entitled "When Hearing May Be Held" and provides in relevant part that "[w]hen an application for a Certificate of

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authority, the Commission considered the difficulty faced by "small carrier" applicants in providing appropriate shipper witnesses. By Order No. 2000-024, dated January 5, 2000, (Docket No. 1999-376-T), the Commission clarified its decision from Order No. 1999-654, to specifically state that the waiver of the shipper witness requirement applied only to those applicants requesting authority to transport household goods between points and places in three, or less, contiguous counties.

PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served.”

### **EVIDENCE OF RECORD**

Mr. Thompson, managing member of Thompson & Webster, LLC who also holds the positions of President and Treasurer, testified in support of the Application. In the day-to-day operations, Mr. Thompson performs such tasks as moving services, booking moves, explaining rates to customers, and dealing with finances and bills. He has been involved with Thompson & Webster since its date of origin of March 5, 2001. Mr. Thompson described his previous experience in the household goods moving industry as working for a brief time for Two Men and A Truck of Columbia as a mover following active duty with the Marine Corps; following college in January, 2000, working for the Two Men and A Truck franchise in Charlotte where he worked as a manager; and then in March 2001, beginning working with Thompson & Webster, LLC and Two Men and A Truck of Augusta.

Thompson & Webster currently holds fifty-mile radius interim authority in the State of Georgia. The fifty-mile radius authority allows Thompson & Webster to perform moves in Georgia as long as the move either originates and/or terminates within a fifty-mile radius of Augusta. Thompson & Webster also holds interstate authority to perform moves to the states surrounding Georgia. Mr. Thompson testified that Thompson & Webster has performed moves within the state of Georgia as well as interstate moves.

With regard to ability to perform the services for which Thompson & Webster seeks authority, Mr. Thompson stated that the Company started with two trucks and has recently purchased a third truck, and the trucks are standard twenty-four foot box trucks. Not including Mr. Thompson, Thompson & Webster employs seven employees and one Customer Service Representative. The Company does not have a U.S.D.O.T. safety rating, but Mr. Thompson stated that upon acquiring such a safety rating that he will provide a copy of that safety rating to the Commission. Regarding the Company's facilities, Mr. Thompson stated that Thompson & Webster rents a facility, pursuant to a three year lease, consisting of a building and approximately two and one-half acres of property on Wrightsboro Road, and the building includes an office and an area to store boxes, other moving equipment, and supplies. Mr. Thompson stated that the property will accommodate approximately six trucks.

Mr. Thompson described the processes involved with becoming a franchisee of Two Men and A Truck. Mr. Thompson explained some of the training involved in the process, including training on moving techniques, safety, equipment, and finances.

With regard to the finances of Thompson & Webster, Mr. Thompson testified that Thompson & Webster has done very well financially. The Company, upon rolling trucks on June 1, 2001, began using one truck and by the end of the month of June was consistently rolling the one truck. Initially, Mr. Thompson and his partner William Pierce Webster, performed all the moving services. As business grew, they began to hire additional employees and train those employees in moving techniques. Currently, the demand is present to staff a third truck for the business.

Mr. Thompson testified that Thompson & Webster maintains periodic maintenance on the trucks. Mr. Thompson stated that his specialty in the Marine Corps was that of diesel mechanic and that he has the ability to recognize potential mechanical problems with the trucks. Mr. Thompson also testified that maintenance logs are maintained for each truck.

With regard to the need for services in South Carolina, Mr. Thompson stated that he believes that there is a need to devote one truck to operations in South Carolina at the present. Mr. Thompson stated that the calls that Thompson & Webster has received from South Carolina, particularly Aiken and Edgefield Counties have been referred to other Augusta moving companies since Thompson & Webster does not possess operating authority in South Carolina. In deciding which counties for which to seek operating authority in South Carolina, Mr. Thompson stated that Thompson & Webster tried to include the counties that would include a fifty-mile radius of Augusta, similar to the authority issued to the Company in Georgia. Also, Mr. Thompson stated another consideration was trying to cater to the authority of Two Men and A Truck of Columbia for those persons desiring to use a Two Men and A Truck franchise. Thus, Thompson & Webster requested operating authority to serve Aiken, Edgefield, Greenwood, Saluda, Lexington, Richland, and Orangeburg Counties to try to encompass a fifty-mile radius of Augusta.<sup>3</sup> Mr. Thompson stated that customers would benefit from using Thompson & Webster because the travel charge to use Two Men and A Truck of Columbia could be cost prohibitive, but the customer would receive the same service using Thompson &

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<sup>3</sup> On cross-examination, Mr. Thompson acknowledged that Thompson & Webster's request for authority also included Barnwell and McCormick Counties.



Webster rather than Two Men and A Truck of Columbia. Mr. Thompson stated that Thompson & Webster has not received calls or inquiries for its services from all the counties for which it seeks authority but has only received calls for its services from Aiken and Edgefield Counties. However, Mr. Thompson further stated that Thompson and Webster has provided service to McCormick County on moves from Augusta to McCormick County on interstate moves.

Mr. Thompson stated that he has seen competition in the geographic area from Five Star Moving, which is another Augusta company specializing in local moves and which holds authority in South Carolina. In fact, Mr. Thompson has referred potential moves from South Carolina to Five Star Moving. With regard to the concerns raised by the Protestors to Webster & Thompson's Application, Mr. Thompson stated that moving companies' desire to provide the best services they can and the customers desire to choose is important. He further stated his opinion that the market is not saturated.

Mr. Thompson stated that Thompson & Webster has not had any complaints filed against it with the Georgia Public Service Commission. Further, Mr. Thompson testified that Webster & Thompson does not have any outstanding judgments pending against it. Mr. Thompson also said that Thompson & Webster is aware of the insurance requirements in South Carolina, and an insurance quote is included with the Application. Additionally, Mr. Thompson stated that Thompson & Webster carries Workers Compensation on its employees. Finally, Mr. Thompson stated that Thompson & Webster is familiar with the regulations and statutes governing for hire motor carrier

operations within South Carolina and that Thompson & Webster will comply with all regulations and statutes.

Thompson & Webster presented Ms. Kreh-Boyer as a witness on the need for the services proposed by Thompson & Webster. Ms. Kreh-Boyer is Vice President of KB Enterprises d/b/a Two Men and A Truck of Columbia and is a twenty-five percent shareholder in Thompson & Webster, LLC. Ms. Kreh-Boyer stated that Two Men and A Truck of Columbia has authority to commence moves in ten counties to points and places within South Carolina. Five of the counties which Webster & Thompson seeks to serve, Aiken, Lexington, Orangeburg, Richland, and Saluda Counties, are included in the scope of authority held by Two Men and A Truck of Columbia.

According to Ms. Kreh-Boyer, Two Men and A Truck of Columbia has received calls for moving services from the area sought by Thompson & Webster. Ms. Kreh-Boyer stated that she sees the need for another moving company in the five counties where the authority of Two Men and A Truck of Columbia overlaps with the authority requested by Thompson & Webster. Further, Ms. Kreh-Boyer testified that Two Men and A Truck of Columbia turns down approximately fifteen to twenty moves a day, depending on the season. On cross-examination, Ms. Kreh-Boyer clarified her statement to say that the fifteen to twenty calls per day are not all from the area sought to be served by Webster & Thompson and that moves are turned down for a variety of reasons, including reasons such as the move is not within Two Men and A Truck of Columbia's scope of authority, the move is an interstate move for which Two Men and A Truck of Columbia does not hold authority, or Two Men and A Truck of Columbia has a full schedule.

Ms. Kreh-Boyer testified that Two Men and A Truck of Columbia would refer calls to Webster & Thompson in the situation where Two Men and A Truck of Columbia did not have authority to perform the move or in the situation where the authority of Webster & Thompson and the authority of Two Men and A Truck of Columbia overlap and Two Men and A Truck of Columbia has a full schedule and cannot accommodate the move. Ms. Kreh-Boyer indicated that Two Men and A Truck of Columbia does not give references of other moving companies in situations where Two Men and A Truck of Columbia cannot perform a move. On cross-examination, Ms. Kreh-Boyer stated that she could not recommend another moving company unless she had personal knowledge of the quality of service provided by the other moving company.

As its last witness, Webster & Thompson presented William R. Moore, III, President and managing member of Two Men and A Truck of Rock Hill. Two Men and A Truck of Rock Hill holds statewide authority. Mr. Moore testified that Mr. Thompson worked for him in the Charlotte office, known as Two Men and A Truck of Charlotte. According to Mr. Moore, the present demand for moving services in South Carolina is strong. Mr. Moore further testified that Two Men and A Truck of Rock Hill operates mainly in the area of York, Lancaster, and Chester Counties. Mr. Moore further testified that he has not received calls from the area where Webster & Thompson seeks authority due to the fact that Two Men and A Truck of Rock Hill is on the other side of the state. On cross-examination, Mr. Moore stated that his business has not originated moves from the counties where Webster & Thompson seeks authority but that his company has terminated moves to some of those counties.

Following the hearing, Thompson & Webster submitted a safety certification on the form approved by the Commission and a copy of its bill of lading.

**FINDINGS OF FACT**

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant, Thompson & Webster, desires to provide moving services of household goods within and between points and places in Aiken, Barnwell, Edgefield, Greenwood, Lexington, McCormick, Orangeburg, Richland, and Saluda Counties, South Carolina. This finding of fact is supported by the testimony of Mr. Thompson and the submission of the Application requesting a Class E Certificate of PC&N.

2. The Applicant, Thompson & Webster is fit, willing, and able to provide and properly perform the services which it seeks to provide. This finding of fact is based upon the testimony of Mr. Thompson and the Application submitted requesting the authority. “Fitness” was demonstrated by Mr. Thompson testifying (1) that Thompson & Webster is aware of the requirement for a safety rating, (2) that there are no outstanding judgments pending against Thompson & Webster, and (3) that Thompson & Webster will operate in compliance with all statutes and regulations pertaining to for-hire motor carrier operations. Further, Mr. Thompson testified to and the Application contains (1) a certification that Thompson & Webster is familiar with the regulations and statutes governing for-hire motor carrier services and (2) that there are no outstanding judgments pending against Thompson & Webster. “Able” was demonstrated by Mr. Thompson testifying that the Applicant currently operates three trucks in Georgia and has seven

employees who are trained and currently providing the moving services the applicant seeks to offer in South Carolina. Mr. Thompson also provided evidence establishing that Thompson & Webster possesses the financial wherewithal necessary to conduct for-hire motor carrier operations in South Carolina. Further, Mr. Thompson testified that the Applicant is aware of the Commission's insurance requirements. "Willingness" was demonstrated by the filing of the Application and the testimony of Mr. Thompson indicating the Applicant's desire to undertake this business venture.

3. The services proposed by Thompson & Webster in the entire area requested are not required by the public convenience and necessity. This finding of fact is based upon the testimony of Mr. Thompson and Ms. Kreh-Boyer. While Mr. Thompson testified that he had received calls to provide moving services in Aiken and Edgefield Counties, Mr. Thompson was unable to testify about the need for his Company's services from the other counties that he seeks to serve. Ms. Kreh-Boyer, a financial partner in the business, testified that she would send business to the Augusta office of Two Men and A Truck if the move was more economical for the Augusta office than for her office of Two Men and A Truck in Columbia. Ms. Kreh-Boyer also opined that the need exists for another mover in certain areas sought to be served by Webster & Thompson. Mr. Moore stated that his company of Two Men and A Truck of Rock Hill has not received any calls for moving services from the area sought to be served by Thompson & Webster. Ultimately, the Applicant was unable to provide sufficient evidence of need in the majority of counties in which authority was sought. In fact, Mr. Thompson only testified to receiving calls for moving services from Aiken and Edgefield Counties as well as to

providing moving services to McCormick County through interstate moves. Additionally, the Applicant has failed to produce any corroborated evidence that public convenience and necessity require the services in the entire area sought to be served. The testimony from the hearing is self-serving testimony from individuals with financial interests in the outcome of the hearing and with no independent witness to corroborate the testimony that public convenience and necessity require the services in the area in which the Applicant proposes to serve.

4. While the Commission does not find sufficient evidence to grant a Certificate of PC&N for the entire service area requested by Thompson & Webster, the Commission does find sufficient evidence to grant authority for Thompson & Webster to provide moving services for household goods in Aiken, Edgefield, and McCormick Counties, South Carolina. The Commission further finds that it may grant authority for three contiguous counties or less, without independent shipper witness testimony, under Commission Order No. 1999-654 (dated September 15, 1999) and Commission Order No. 2000-24 (dated January 5, 2000).

#### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that the Thompson & Webster has demonstrated through the Application and the testimony presented that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp.2001).

2. The Commission concludes that Thompson & Webster has failed to demonstrate through its presentation that the public convenience and necessity in the area in which the Applicant proposes to serve requires the services proposed by Thompson & Webster.

3. While the Commission concludes that Thompson & Webster has failed to demonstrate that the public convenience and necessity requires the moving services of Thompson & Webster in the entire area in which Thompson & Webster proposes to serve, the Commission does conclude that Thompson & Webster has demonstrated that the public convenience and necessity requires the services of Thompson & Webster between points and places in Aiken, Edgefield, and McCormick Counties, South Carolina

3. Based on the conclusions above, that Thompson & Webster has demonstrated that it meets the requirements of fit, willing, and able and that Thompson & Webster has demonstrated that the public convenience and necessity requires the services it proposes in the limited area of Aiken, Edgefield, and McCormick Counties, South Carolina, the Commission concludes that a Class E Certificate of PC&N should be granted to Thompson & Webster with the authority to provide for the movement of household goods within and between points and places in Aiken, Edgefield and McCormick Counties, South Carolina. This grant of authority is contingent upon Thompson & Webster complying with all Commission regulations, and this grant of authority is not effective until such time as Thompson & Webster comes into compliance with the Commission regulations as outlined below.

IT IS THEREFORE ORDERED THAT:

1. The Applicant, Thompson & Webster, LLC d/b/a Two Men and A Truck of Augusta, should be granted a Class E Certificate of Public Convenience and Necessity authorizing Thompson & Webster, LLC d/b/a Two Men and A Truck of Augusta to provide transportation services by motor vehicle as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):  
Between points and places in Aiken, Edgefield and  
McCormick Counties, South Carolina.

2. Thompson & Webster, LLC d/b/a Two Men and A Truck of Augusta shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate of PC&N shall be issued to Dowdy Thompson & Webster, LLC d/b/a Two Men and A Truck of Augusta authorizing the motor carrier services granted herein.



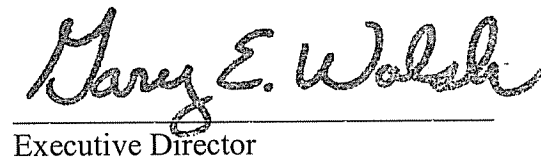
4. Prior to compliance with the above referenced requirements and receipt of a Certificate of PC&N, the motor carrier services authorized herein may not be provided.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)